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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In Re Petition for Rule Making Of
Channel 32, Incorporated
To Amend Table of Allotments,
§ 73.606(b), to Change Allotment
for KWBP(TV), Channel 32, Salem,
OR to Salem-Portland, OR

RM - _____

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PETITION FOR RULE MAKING

I. Introduction

Channel 32, Incorporated, licensee of KWBP(TV), Channel 32, Salem, OR, pursuant to section 1.401 of the Commission's Rules and by its attorneys, hereby submits this Petition for Rule Making to change the allotment for Channel 32 from Salem, OR to Salem-Portland, OR.

This proposed change in community of license will not involve any engineering change or any technical change of any kind to the station's facilities. Channel 32's tower site, power, and contours will not be changed in any way if this petition is granted. Moreover, no new channel is sought. Channel 32, Incorporated merely seeks to keep its same coverage area, but to modify its community of license from Salem to Salem-Portland. Thus, this petition does not run afoul of the freeze on certain applications to modify facilities of TV stations or on new channel allotments in certain markets.^{1/}

^{1/} See Advanced Television Systems and Their Impact on Existing Television Broadcast Service, RM-5811, 1987 FCC Lexis 3477 (July (continued...))

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Channel 32, Incorporated merely seeks to change Channel 32's paper allotment from Salem, OR to Salem-Portland, OR. Channel 32 is within the Portland DMA and the Portland market for the Nielsen sweeps. Channel 32 is also within the Portland ADI. Thus, Salem and Portland have been treated as a single television market for purposes of the Commission's must-carry and prime time access rules.^{2/} Channel 32 merely asks that its allotment be modified to conform to its treatment by the Commission for these other purposes as a Salem-Portland station.

Moreover, as shown herein, the area from Salem to Portland, which is known as the Willamette Valley, is essentially one all-inclusive community with "common social, cultural, trade, and economic interest." See Television Channel Assignments (Hampton-

^{1/}(...continued)

17, 1987), 52 Fed. Reg. 28346 (1987). In the event that it is determined that this petition somehow is subject to a freeze, Channel 32, Incorporated requests a waiver of such freeze. A grant of this petition will not in any way interfere with the implementation of digital television service. Rather, a grant will serve the public interest by allowing Channel 32 to serve fully its entire service area, but with a community of license reflecting that Salem-Portland is a single television market. Thus, if necessary, a waiver would be warranted. See WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

^{2/} The ADI designations became defunct when Arbitron left the television business. See Report and Order and Further Notice of Propose Rule Making, CS Docket No. 95-178, released May 24, 1996 at ¶ 13. As a result, the Commission will use the 1991-1992 ADI Market Guide for the 1996 must-carry election and Nielsen's DMA for the October 1, 1999 election. Id. at ¶ 1. Using either Arbitron's ADI or Nielsen's DMA, Channel 32 is deemed within the Portland television market for purposes of the must-carry rules, despite being licensed to Salem.

Norfolk-Portsmouth-Newport News, Va.) 53 R.R. 2d (P&F) 53, 55 (1983).

Channel 32 places a city grade signal over the entire Salem-Portland area (indeed, over the entire Willamette Valley),^{3/} and Channel 32 is heavily involved in community activities throughout the Salem-Portland area. Channel 32, a Warner Brothers affiliate, has responded to many requests for assistance from Salem-Portland civic events and has attempted to satisfy the needs and interests of the entire Willamette Valley. Thus, based on all of these factors, Channel 32 merely seeks to formalize its status as a Salem-Portland station.

II. Background

A. The Willamette Valley

The Willamette River runs through the entire Salem-Portland area. This area is one contiguous valley connected throughout by U.S. Highway I-5. Although it is 47 miles from the city of Salem's limits to the city of Portland's limits such figures are somewhat misleading. The Salem-Portland Valley operates as a single social, cultural, trade, and economic center with close links throughout the valley.

This single social, cultural, trade, and economic center that makes up the Willamette Valley has deep historical roots. As a result of the famous Oregon Trail expeditions, the land along the Willamette Valley was settled, from Portland at the

^{3/} A copy of Channel 32's most recently filed proposed coverage map, which was filed with a July 1996 minor modification application, is attached as Exhibit 1.

north through Salem at the south. Since the 19th Century, there has been a commonality of interests in the area bordering the Willamette River. The entire Willamette Valley has long has a homogenous flow of people, with similarities in their social, cultural, economic, and recreational needs and interests. The city limits dividing Portland and Salem into separate communities for purposes of the Table of Allotments are artificial; a hyphenated Salem-Portland market is wholly appropriate.

Population data provides further support for a Salem-Portland designation. The Salem-Portland area includes four contiguous counties: Marion County, Clackamas County, Washington County, and Multnomah County. Only about 32% of Marion county's population live in incorporated areas (and, Salem is within Marion County): Similarly, only 45% of Clackamas County's residents and 50% of Washington County's residents live in incorporated areas. Approximately 7% of Multnomah County's residents live in incorporated areas even though Portland is located in Multnomah County. The bulk of the residents of the Salem-Portland area, therefore, do not live in cities or towns and instead identify with the region, the overall Salem-Portland area, rather than with a specific city or town.

As for commerce, the Willamette Valley is generally bound together. The high technology, manufacturing, maritime, communications, and transportation businesses located in and around Portland draw employees and consumers from Salem and other areas within the Valley. In turn, the state governmental centers

in Salem draw employees and citizens from the Portland area and other areas along the Valley. For its part, Channel 32's employees reside throughout the Salem-Portland area.

B. Channel 32

Channel 32 serves viewers throughout the Salem-Portland area. It places a city grade signal over the entire Willamette Valley. It has offices in Beaverton, which is just a few miles from Portland. There is no separate Salem DMA or Salem ADI. Channel 32 is in the Portland DMA and Portland ADI.^{4/} For purposes of the must-carry and prime time access rules, the Portland and Salem television markets are treated as one.^{5/}

Channel 32 is carried by the Portland and Salem cable systems (all Portland stations are carried on the Salem cable system). Channel 32 is also carried on all other cable systems in the Willamette Valley. Thus, to a viewer anywhere in the Willamette Valley, throughout the Salem-Portland area, Channel 32 is one of the over-the-air television stations competing with other Valley stations, whether licensed to Portland or Salem.

^{4/} As the Commission recently noted, DMA's "represent the actual market areas in which broadcasters acquire programming and sell advertising." Report and Order and Further Notice of Proposed Rule Making, CS Docket No. 95-178, released May 24, 1996 at ¶ 39.

^{5/} The market definitions used for must-carry purposes are also cross-referenced and incorporated into the Copyright Act because under the compulsory copyright licensing provisions of section 111 of the Copyright Act, different copyright fees are established for local signals than distant signals. 17 U.S.C. § 111(f). For copyright purposes, the Portland cable systems have always treated Channel 32 as a local signal.

Channel 32, while now licensed to Salem, has served the needs and interests of the entire Salem-Portland area. It has aired Portland weather-related school and business closing; and it has promoted events of the Oregon Museum of Science and Industry, the Portland-based Zoo's season launch, the Oregon Symphony, activities at area colleges and universities, and professional and amateur sporting events. Although Channel 32 is licensed to Salem, it has responded to many requests for assistance and involvement from Portland-based and Salem-based groups alike; the Commission should treat the station as its viewers have -- as a Salem-Portland station.

Channel 32 is not seeking to minimize in any way its existing commitment to meet the needs and interests of the residents of Salem.^{6/} If this petition were granted, Channel 32 would continue to meet that commitment as part of meeting the needs and interests of the residents of the entire Willamette Valley because, as noted, the Valley is actually one market.

Thus, based on the unique demographic and historical characteristics of the Salem-Portland area, the Commission's treatment of Channel 32 as part of the Portland television market for other purposes, and Channel 32's existing service throughout the Salem-Portland area, Channel 32, Incorporated asks the Commission to modify Channel 32's allotment to Salem-Portland.

^{6/} Another station, KBSP-TV, Channel 22, a Home Shopping Network affiliate, is also licensed to Salem. It operates at lower power than Channel 32 and apparently does not place a city grade signal over the entire Valley. Thus, if this petition were granted, Salem would still have one station licensed to it.

III. Channel 32 Should Be Allotted to Salem-Portland

The Commission has held in the past that hyphenation of a television market "is appropriate where it appears that the communities should be treated as one community by reason of their proximity and common social, cultural, trade and economic interests." Television Channel Assignments (Hampton -Norfolk Portsmouth-Newport News), 53 RR 2d (P&F) at 55; Lancaster-Lebanon, 24 RR (P&F) 1564 (1962). Moreover, the Commission takes into account whether the market is treated as one for other purposes, such as for cable television signal carriage (i.e., must-carry rules) and the prime time access rule. Id.^{2/}

These standards are met here with respect to Salem-Portland. As has been shown, there is a strong historical demographic connection throughout the entire Salem-Willamette area. Citizens and businesses throughout the Valley have common social, cultural, trade and economic interests. Further, the Commission already treats Salem and Portland as one market for purposes of the must-carry rules and the prime time access rule.

Given that Channel 32 already serves the Salem-Portland area, is already carried by Portland cable systems because it is in the Portland ADI and DMA, and is treated by residents throughout the Valley as a Salem-Portland station, the Commission should change Channel 32's allotment to Salem-Portland so that it is treated for all purposes as a Salem-Portland station.

^{2/} The Commission also took into account how the markets were treated for purposes of annual television market financial reports. However, these reports are no longer filed.

IV. Conclusion

WHEREFORE, Channel 32, Incorporated requests that the Commission issue a notice of proposed rule making to change the allotment for Channel 32 from Salem, OR to Salem-Portland, OR.

Respectfully submitted,



Dean R. Brenner
CRISPIN & BRENNER, P.L.L.C.
901 15th Street, N.W.
Suite 440
Washington, D.C. 20005
(202) 828-0155

Attorney for Channel 32,
Incorporated

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